

Response Under 37 CFR 1.116  
Expedited Procedure  
Examining Group 1761

Remarks

Claim 11 is allowable if rewritten in independent form, to include all of the limitations of the base claim and intervening claims.

Claim Rejections 35 USC 103(a)

Claims 1-10 and 12-18 are rejected under 35 USC 103(a) as being unpatentable over Lynn. The Examiner argues that the claims are open "comprising claims" and do not exclude any bread ingredients, or any baking limitations.

Therefore, the subject matter of claim 1 was held to be obvious.

We respectfully disagree with that conclusion.

It is respectfully submitted that for judging the obviousness or non-obviousness of the subject matter of present claim 1 depends on whether someone of ordinary skill in the art would have taken into account – in an obvious manner – to acidify the product which is described by Lynn.

This judgment should start only from the known prior art without considering the desired result provided by the present invention, i.e. not retroactively.

Therefore, we should ask whether someone skilled in the art would obviously have tried to improve the product of Lynn by acidifying the product to such an extent that a firmer consistency is obtained.

This is not the case. Someone skilled in the art would not have had reason to obtain a firmer consistency with respect to the product of Lynn, because he or she would have had in mind that the dough will be baked anyway such that making the consistency firmer would have been senseless for this product.

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However, to further clarify the difference between the presently claimed process and the disclosure of Lynn we have amended claim 1 as a process for producing a vegetarian substance for substituting animal protein or Tofu containing food or toiletry.

Furthermore, the result of the process is clarified as a pasty substance, suitable as vegetarian substitute for animal protein or Tofu containing food or toiletry.

The disclosure for this amendment can be found on page 1, line 15 to page 2, line 27 and page 7, lines 23 to 25 of the specification as originally filed.

Lynn describes a dough for baking bread. Such dough is not to be used as a pasty substance as vegetarian substitute for animal protein or Tofu-containing food or toiletry. In contradiction thereto, the dough for baking bread described by Lynn is considered to replace a bread dough made of grain.

The Examiner's objections that claim 1 would be an open "comprising claim" not excluding any bread ingredients is cleared up by the clarification of claim 1 with respect to the adopted purpose and result of the process according to the invention.

Claims 2 to 18 are considered to be non-obvious as being dependent on the amended claim 1.

Furthermore, independent claim 19 is introduced, defining the ingredients during the process by their quantitative ratio.

According to claim 19, the resulting second substance is also defined by its pH-value being smaller than 5.

A process for producing a substance with those features is not found in any of the cited prior art.

US Patent Application 09/762,347  
Applicant: Dell Eva Marcello  
(H)99GUI11341US  
2/20/04

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Moreover, claim 11, which was already considered to be allowable, is rewritten in independent form (claim 20) as proposed by the examiner.

Wherefore, consideration and allowance of the claims as amended is respectfully requested.

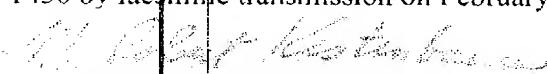
A one-month extension of time in which to respond to the outstanding Office Action is hereby requested. PTO Form 2038 is enclosed authorizing charging a credit card for the prescribed one-month Large Entity extension fee of \$110. Please charge any additional fees or credit any overpayments to Deposit Account 11-0665. A duplicate of this page is enclosed for this purpose.

Respectfully submitted,



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I hereby certify this correspondence is being submitted to Commissioner for Patents, Alexandria, VA 22313-1450 by facsimile transmission on February 20, 2004, fax number (703) 872-9306.

  
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Moreover, claim 11, which was already considered to be allowable, is rewritten in independent form (claim 20) as proposed by the examiner.

Wherefore, consideration and allowance of the claims as amended is respectfully requested.

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